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**More Truck Lines, Inc. and General Truck Drivers, Office, Food & Warehouse Union, Teamsters Local 952, International Brotherhood of Teamsters, AFL-CIO. Case 21-CA-35414**

March 14, 2003

**DECISION AND ORDER**

BY MEMBERS LIEBMAN, SCHAMBER, AND WALSH

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge and an amended charge filed on October 17 and October 21, 2002,<sup>1</sup> respectively, the General Counsel issued the complaint on November 18, 2002, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 31-RC-7554. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On December 30, 2002, the General Counsel filed a Motion for Summary Judgment. On December 31, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

The Respondent admits its refusal to bargain, but contests the validity of the Union's certification on the grounds that the Board improperly set aside the May 20, 1999 runoff election and improperly overruled its objections to the second runoff election. The Respondent further argues that it would be premature to grant the General Counsel's Motion for Summary Judgment because the Board's decision in the prior consolidated unfair labor practice case is currently pending review in the United States Court of Appeals for the District of Columbia Circuit.<sup>2</sup>

<sup>1</sup> The Respondent's answer states that Respondent has insufficient knowledge or information to admit or deny the complaint allegations with respect to the filing and service of the charge and amended charge. However, copies of the charge and amended charge are attached to the General Counsel's motion, with affidavits of service, and the Respondent has not challenged the authenticity of those documents.

<sup>2</sup> The initial election in the underlying representation proceeding was held on December 4, 1997, pursuant to a Stipulated Election Agreement. The ballot choices were Teamsters Local 952 (the Petitioner),

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also reject the Respondent's contention that granting the General Counsel's Motion for Summary Judgment would be premature at this point given the pending petitions for review and enforcement of the Board's decision finding that the Respondent's conduct prior to the May 20, 1999 runoff election violated Section 8(a)(1) of the Act. Section 10(g) of the Act provides that the commencement of proceedings in a United States Court of Appeals pursuant to a petition for enforcement or review "shall not, unless specifically ordered by the court, operate as a stay of the Board's order." The Respondent does not assert that an order staying the Board's order has been issued by the court. Accordingly, the Respondent must honor the certification, and its duty to bargain is not postponed by a pending petition for court review. See *Midland-Ross, Inc.*, 243 NLRB 1165, 1166 (1979), *enfd.* 653 F.2d 239 (6th Cir. 1981). *M.J. Metal Products*, 330

the Brotherhood (the Intervenor), or neither Union. Teamsters Local 952 (the Union) received a majority of the ballots cast in this initial election, but the election was later set aside by the Board based on the Respondent's objections.

Neither the Union nor the Brotherhood received a majority in the second election. Accordingly, a runoff election was held on May 20, 1999. The Brotherhood received a majority of the ballots cast in the runoff election, but the Union filed objections. The objections alleged, *inter alia*, that the Respondent had misrepresented the law by informing employees that they would not receive scheduled wage increases under the existing Brotherhood contract if the Union was certified (Objection 1).

This and other objections (subsequently withdrawn to the extent not coextensive with Objection (1) were thereafter consolidated for hearing with a related unfair labor practice complaint containing a similar allegation under Sec. 8(a)(1) of the Act. On October 1, 2001, the Board issued a Decision, Order, and Direction of Election (336 NLRB No. 69) affirming the judge's finding that the Respondent's alleged statement violated Sec. 8(a)(1) and warranted setting aside the May 20, 1999 runoff election. On November 13, 2001, the Respondent filed a petition for review of the Board's decision with the D.C. Circuit, and on December 31, 2001, the Board petitioned the court for enforcement of the Board's order. (The petitions for review and enforcement remain pending.)

A second runoff election was held on January 24, 2002. The Union received a majority of the votes cast, but the Respondent filed objections. The objections alleged, *inter alia*, that the Union engaged in improper electioneering and campaigning on the day of the election, offered improper inducements to union observers by offering them lunch, and misrepresented the Employer's obligation to implement terms of the Brotherhood's contract if the Union won the election. The hearing officer recommended that the objections be overruled, and the Board adopted the hearing officer's findings and recommendations and certified the Union by unpublished order dated September 24, 2002.

NLRB 502 fn. 2 (2000), enfd. 267 F.3d 1059 (10th Cir. 2001).

We therefore grant the Motion for Summary Judgment.<sup>3</sup>

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all material times, the Respondent has been a California corporation engaged in the business of transporting paving materials, rock, sand, and related equipment to customers located in Southern California, with its principal place of business located at Corona, California, and with other facilities in Westminster and Irvine, California.

During the 12-month period ending November 18, 2002, a representative period, the Respondent, in conducting its business operations, purchased and received at its California facilities goods valued in excess of \$50,000 directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

##### II. ALLEGED UNFAIR LABOR PRACTICES

###### A. *The Certification*

Following a second runoff election held January 24, 2002, the Union was certified on September 24, 2002, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time truck drivers employed by the Employer from its Corona, Irvine and Westminster, California, locations; excluding all other employees, office clerical employees, dispatchers, guards and supervisors as defined by the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

###### B. *Refusal to Bargain*

In October 2002, the Union requested the Respondent to recognize and bargain with it, and, since about the same time, the Respondent has failed and refused to do so.<sup>4</sup> We find that the Respondent's conduct constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

<sup>3</sup> Members Schaumber and Walsh did not participate in the underlying representation proceeding. However, they agree that the Respondent has not raised any new matters warranting a hearing in this proceeding and that summary judgment is appropriate.

<sup>4</sup> The Respondent denies the complaint allegations that the Union verbally requested it to bargain on October 9 and 16, 2002, and that Respondent has refused to do so since October 16, 2002. However, Respondent admits that, in October 2000, the Union requested Respondent to recognize and bargain with it and that Respondent declined to do so.

#### CONCLUSION OF LAW

By failing and refusing since October 2002, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, More Truck Lines, Inc., Corona, Irvine, and Westminster, California, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Refusing to bargain with General Truck Drivers, Office, Food & Warehouse Union, Teamsters Local 952, International Brotherhood of Teamsters, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time truck drivers employed by the Employer from its Corona, Irvine and Westminster, California, locations; excluding all other employees, office clerical employees, dispatchers, guards and supervisors as defined by the Act.

(b) Within 14 days after service by the Region, post at its facilities in Corona, Irvine, and Westminster, Califor-

nia, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 2002.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 14, 2003

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Wilma B. Liebman, Member

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Peter C. Schaumber, Member

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Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD  
APPENDIX  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO  
Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with General Truck Drivers, Office, Food & Warehouse Union, Teamsters Local 952, International Brotherhood of Teamsters, AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time truck drivers employed by us from our Corona, Irvine and Westminster, California, locations; excluding all other employees, office clerical employees, dispatchers, guards and supervisors as defined by the Act.

MORE TRUCK LINES, INC.

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<sup>5</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of The National Labor Relations Board" shall read "Posted Pursuant to a Judgment of The United States Court of Appeals Enforcing An Order of The National Labor Relations Board."